

§ 5.105 Course of action available.

During an investigation, the investigating officer may take appropriate action as follows:

- (a) Prefer charges.
- (b) Accept voluntary surrender of a license, certificate or document.
- (c) Accept voluntary deposit of a license, certificate or document.
- (d) Refer the case to others for further action. The investigating officer may refer the case to the Commandant or to an Officer in Charge, Marine Inspection, at any port for completion of administrative action if an adequate basis for action is found and the person under investigation and/or witnesses are not locally available.
- (e) Give a written warning. The investigating officer may give a warning to any person holding a license, certificate or document. Refusal to accept the written warning will normally result in a withdrawal of the warning and the preferral of charges. An unrejected warning will become a part of the person's record.
- (f) Close the case.

§ 5.107 Preparation and service of charges and specifications.

- (a) When preferring charges, the investigating officer prepares charges and specifications, together with a notice of the time, date and place of the hearing.
- (b) The original of the charges and specifications and the notice of the time, date and place of hearing are served upon the respondent, either by personal service or certified mail, return receipt requested; restricted delivery (receipt to be signed by the addressee only).
- (c) Service will be made sufficiently in advance of the time set for the hearing so as to give the respondent a reasonable opportunity to prepare a defense.
- (d) At the time of service, whether personal or by certified mail, the respondent will also be advised with respect to:
 - (1) The nature of suspension and revocation proceedings and the possible results thereof;
 - (2) The right to have representation by counsel at the hearing, and that

counsel may be, but need not be, a lawyer;

- (3) The right to have witnesses, records or other evidence subpoenaed and that
- (4) Failure to appear at the time, date and place specified may result in the hearing being in his absence.
- (e) If the alleged act involves mental incompetence, it is recommended to the respondent, at the time of service of charges, that he procure counsel.
- (f) If the alleged act involves mental or physical incompetence, the respondent is advised that evidence of medical examination may be submitted.

Subpart E—Deposit or Surrender of License, Certificate or Document**§ 5.201 Voluntary deposits in event of mental or physical incompetence.**

- (a) A holder may deposit a license, certificate, or document with the Coast Guard in any case where there is evidence of mental or physical incompetence. A voluntary deposit is accepted on the basis of a written agreement, the original of which will be given to the holder, which specifies the conditions upon which the Coast Guard will return the license, certificate, or document to the holder.
- (b) Where the mental or physical incompetence of a holder of a license, certificate, or document is caused by use of or addiction to dangerous drugs, a voluntary deposit will only be accepted contingent on the following circumstances:
 - (1) The holder is enrolled in a bona fide drug abuse rehabilitation program;
 - (2) The holder's incompetence did not cause or contribute to a marine casualty,
 - (3) The incompetence was reported to the Coast Guard by the individual or any other person and was not discovered as a result of a Federal, State or local government investigation; and
 - (4) The holder has not voluntarily deposited or surrendered a license, certificate, or document, or had a license, certificate, or document revoked for a drug related offense on a prior occasion.
- (c) Where the mental or physical incompetence of a holder of a license, certificate, or document is caused by

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use or addiction to alcohol, a voluntary deposit will only be accepted contingent on the following circumstances:

(1) The holder is enrolled in a bona fide alcohol abuse rehabilitation program;

(2) The holder's incompetence did not cause or contribute to a marine casualty; and

(3) The incompetence was reported to the Coast Guard by the individual or any other person and was not discovered as a result of a Federal, State, or local government investigation.

(d) Where the conditions of paragraphs (b) and (c) of this section are not met, the holder may only surrender such license, certificate, or document in accordance with § 5.203.

[CGD 84-099, 52 FR 47535, Dec. 14, 1987]

§ 5.203 Voluntary surrender to avoid hearing.

(a) Any holder may surrender a license, certificate or document to the Coast Guard in preference to appearing at a hearing.

(b) A holder voluntarily surrendering a license, certificate or document shall sign a written statement containing the stipulations that:

(1) The surrender is made voluntarily in preference to appearing at a hearing;

(2) All rights to the license, certificate or document surrendered are permanently relinquished; and,

(3) Any rights with respect to a hearing are waived.

(c) A voluntary surrender of a license, certificate or document to an investigating officer in preference to appearing at a hearing is not to be accepted by an investigating officer unless the investigating officer is convinced that the holder fully realizes the effect of such surrender.

§ 5.205 Return or issuance of a license, certificate of registry, or merchant mariners document.

(a) A person may request the return of a voluntarily deposited license, certificate, or document at any time, provided he or she can demonstrate a satisfactory rehabilitation or cure of the condition which caused the incompetence; has complied with any other conditions of the written agreement executed at the time of deposit; and

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complies with the physical and professional requirements for issuance of a license, certificate, or document.

(b) Where the voluntary deposit is based on incompetence due to drug abuse, the deposit agreement shall provide that the license, certificate, or document will not be returned until the person:

(1) Successfully completes a bona fide drug abuse rehabilitation program;

(2) Demonstrates complete non-association with dangerous drugs for a minimum of six months after completion of the rehabilitation program; and

(3) Is actively participating in a bona fide drug abuse monitoring program.

(c) Where the voluntary deposit is based on incompetence due to alcohol abuse, the deposit agreement shall provide that the license, certificate, or document will not be returned until the person:

(1) Successfully completes a bona fide alcohol abuse rehabilitation program; and

(2) Is actively participating in a bona fide alcohol abuse monitoring program.

(d) The voluntary surrender of a license, certificate, or document is the equivalent of revocation of such papers. A holder who voluntarily surrenders a license, certificate, or document must comply with provisions of §§ 5.901 and 5.903 when applying for the issuance of a new license, certificate, or document.

[CGD 84-099, 52 FR 47535, Dec. 14, 1987]

Subpart F—Subpoenas

§ 5.301 Issuance of subpoenas.

(a) Every subpoena shall command the person to whom it is directed to appear at a specified time and place to give testimony or to produce books, papers, documents, or any other evidence, which shall be described with such particularity as necessary to identify what is desired.

(b) The investigating officer may issue subpoenas for the attendance of witnesses or for the production of books, papers, documents, or any other relevant evidence needed by the investigating officer or by the respondent.